IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 02/2002

The Oriental Insurance Company Limited
Through its Divisional Manager,
Rajpur Road, Dehradun,
District Dehradun

…..…..Appellant.

Versus

1- Avtar Singh S/o Mahendra Singh
R/o 31, Old Cannaught Place Dehradun.

2- Surendra Sharma S/o Panch Ram
R/o Bhood Vyash P.O. Kalasi
District Dehradun.

3- Panch Ram S/o Thapru R/o Village
Bhood Vyash P.O. Kalasi
District Dehradun …..Respondents.

Sri Pankaj Purohit, Advocate for the appellant.
Sri L.K. Tiwari, for respondent.

Coram: Hon'ble P.C. Verma,J.
Hon'ble B.C. Kandpal,J.

Dated: 06-06-2006

This appeal from order, U/S 173 of the Motor Vehicles Act, has been preferred against the judgment and award dated 25-9-2001, passed by Additional District Judge/ MACT/IV F.T.C., Dehradun in MACP No. 39/2000 Avtar Singh Vs. Surendra Sharma and others, awarding Rs. 4,67,029/- as compensation in favour of the claimant along with 9% per annum interest payable by appellant Oriental Insurance Company.

2- Brief facts of the case giving rise to this appeal are that on 30-8-1999 at about 6.45 P.M. the claimant Avtar Singh along with his friend riding as pillion rider in his Scooter No. D.M.H. 4485 was coming Dehradun from Harbertpur and when the scooter reached near Jhajara on Dehradun- Chakrauta road, jeep No. U.P. 07-H-548 driven by respondent Surendra Sharma, came there

rashly and negligently and dashed the scooter and accident occurred. The claimant/respondent received grievous injuries in the accident. Due to accident there were multiple fractures on his right. The injured got treatment at Doon Hospital and from there he was referred to Himalayan Institute Jolly Grant. The claimant/respondent alleged that he incurred about rupees two lacks in his treatment. Still he is undergoing treatment and about one lac rupees will be spent on his treatment. The claimant also pleaded that he is the owner of Tata 407 No. U.P. 07-A-3470 and he used to drive the said jeep and was earning Rs. 5000/- per month for the livelihood of his family. The claimant has, therefore, filed claim petition for Rs. 7,50,000/-.

3- The respondent No.1 and 2 owner of jeep No. U.P. 07-H-548 contested the claim petition by filing W.S. and alleged that the accident had occurred due to own fault of the claimant as he was driving the scooter rashly and negligently. They also alleged that the offending jeep was insured with Oriental Insurance Company. It was also alleged that they are not liable to pay any compensation.

4- The Oriental Insurance Company also contested the claim petition by filing its W.S. It was pleaded by the Insurance Company that the excessive amount of compensation has been claimed. It was denied that the offending jeep was being driven rashly and negligently. The averment with regard to the expenses on medical treatment has also been denied. It also denied the liability to pay the compensation.

5- On the basis of the pleadings of the parties the Tribunal framed relevant issues. Thereafter claimant examined himself as P.W.1 and Harvindra Singh as P.W.2 and also filed documents. The owner and insurer did not adduce any evidence in support of their contentions.

6- The Tribunal on assessment of evidence on record allowed the claim petition and awarded Rs. 4,67,029/- as compensation to the claimant along with 9% per annum interest payable by the Oriental Insurance Company.

7- Feeling aggrieved from impugned judgment and award the Oriental Insurance Company has filed this appeal.

8- We have heard learned counsel for the parties and perused the record.

9- The only question which is to be considered in this appeal is -whether the amount of the compensation awarded in favour of the claimant/respondent is excessive or not.

10- The claimant in his evidence has stated that he has incurred about two lacs rupees in his medical treatment and in future also he has to undergo several operations. The treatment of the claimant is still going on and which may involve one lac rupees more. The claimant has filed certain documents relating to his treatment, which show that the claimant has invested about Rs. 2,62,029/- in his medical treatment. Apart of the aforesaid documents, the claimant has also adduced the evidence before the Tribunal concerned that he has to undergo further medical treatment in future and an amount of rupees one lac in this regard is likely to be incurred. The claimant in his deposition before the court has stated that as yet an amount of Rs. 3,50,000/- to Rs. 4,00,000/- approximately has been invested by him in his treatment and according to the doctor his treatment will continue for about one and a half year. He has also deposed that still he has to invest about one and a half lacs rupees in his treatment, but even then he would not be able to lead the normal life. The claimant has also deposed that he had already undergone 12 operations as yet on account of the injuries sustained by him.

11- Keeping in view the aforesaid evidence, as well as the documents filed by the claimant before the Tribunal, it can be safely assessed that the claimant has in fact invested an amount of Rs. 2,62,029/- in his medical treatment and he has still to undergo medical treatment which may incur an amount of rupees one lac approximately.

12- The claimant had appeared before this court and we also formed an opinion after having a look at the claimant that he is still not being able to walk without the assistance of a crutch. The condition of the claimant is indicative of this fact that he will certainly not be able to lead the normal life even after his complete medical treatment. The Tribunal has rightly awarded Rs. 50,000/-

for loss of his earning during the period the claimant had undergone his medical treatment. The Tribunal has also rightly awarded an amount of Rs. 5,000/- for mental pain and agony on account of the injuries suffered by the claimant. As the claimant will have to undergo further medical treatment for a period of about one and a half years, therefore, his work and income is also going to suffer for that period. The Tribunal has also rightly awarded an amount of Rs. 50,000/- in this regard.

13- We are of the view that the judgment and award of the Tribunal does not require any interference. We also come to the conclusion that the claimant is entitled for an amount of Rs. 4,67,029/- as compensation in lieu of the injuries suffered by him in the accident. As far as the interest to be paid by the appellant to the claimant is concerned, the finding of the Tribunal indicated in the impugned judgment is confirmed.

14- The appeal lacks merit and is liable to be dismissed.

15- Accordingly the appeal is dismissed. The impugned judgment and award dated 25-9-2001, passed by Additional District Judge/ MACT/IV F.T.C., Dehradun in MACP No. 39/2000, is hereby confirmed. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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